

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re the Matter of)

COMPLAINT OF SKY ANGEL U.S. LLC)

Against Discovery Communications, LLC, *et al.*)
for Violation of the Commission's Competitive)
Access to Cable Programming Rules)

FILED/ACCEPTED
File No. 12-80
MAY 21 2010

Federal Communications Commission
Office of the Secretary

**RESPONSES AND OBJECTIONS OF SKY ANGEL U.S., LLC TO
DISCOVERY COMMUNICATIONS, LLC'S FIRST SET OF INTERROGATORIES**

Pursuant to Section 76.1003(j) of the Commission's rules,¹ Sky Angel U.S., LLC ("Sky Angel"), by its attorneys, hereby responds and objects to the First Set of Interrogatories ("Interrogatories") served by Discovery Communications, LLC ("Discovery") on Sky Angel on April 21, 2010.²

GENERAL OBJECTIONS

1. Sky Angel objects to the Interrogatories, including the definitions and instructions, to the extent they (a) contain requests that exceed the scope and requirements of the applicable Commission rules, which provide for interrogatories and document production requests, and (b) purport to require discovery not provided for by those rules, including, but not limited to discovery on subjects not at issue in this case.

2. Sky Angel objects to the disclosure of information subject to the attorney-client and/or work-product privileges or to any other privilege provided by rule or law.

¹ 47 C.F.R. §76.1003(j).

² As used herein, the term "Complaint" means the *Program Access Complaint* filed with the Commission by Sky Angel on March 24, 2010, and the term "Reply" means the *Reply to Answer to Program Access Complaint* filed with the Commission by Sky Angel on May 6, 2010.

3. Sky Angel objects to the Interrogatories in their entirety insofar as they are duplicative, unduly burdensome and not reasonably calculated to lead to the discovery of relevant evidence.

4. Sky Angel's responses and objections are based upon the results of a diligent effort to respond to the Interrogatories. Sky Angel reserves its right to amend, modify or supplement the objections or responses stated herein if necessary at a later date.

5. Sky Angel objects to the Interrogatories to the extent they require Sky Angel to formulate a legal conclusion to develop a response.

6. Sky Angel objects to the Interrogatories to the extent they require Sky Angel to provide information or identify documents already known to or in the possession of Discovery or its agents. In responding to these Interrogatories, Sky Angel does not waive the foregoing objections, nor the specific objections that are set forth in the responses to particular Interrogatories. Sky Angel incorporates its General Objections into each objection and/or individualized response contained herein and each supplement to these responses hereinafter provided. By its responses, Sky Angel does not concede that the information requested is relevant to this action or is calculated to lead to the discovery of admissible evidence. Sky Angel expressly reserves the right to object to further discovery into the subject matter of any of these Interrogatories, to the introduction into evidence of any response or portion thereof, and to supplement its responses should further investigation disclose responsive information.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

Interrogatory No. 1: State the basis for your contention that Sky Angel is an MVPD.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 1 because it requires Sky Angel to formulate a legal conclusion to develop a

response. Sky Angel also objects to this Interrogatory to the extent that it calls for the production of information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other rule of privilege or confidentiality. Subject to and without waiving any of the aforementioned General Objections, *see* Reply, pp. 3-21; 47 C.F.R. §76.1000(e) (“The term ‘multichannel video programming distributor’ means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.”) (emphasis added). Sky Angel fits squarely within this definition of MVPD because of its distribution of approximately 80 linear video channels to paying subscribers.

Additionally, Sky Angel notes, subject to and without waiving any of the aforementioned General Objections, that certain of the Interrogatories, either intentionally or unintentionally, neglect that the plain text of the Commission’s rules themselves confirm that a distributor such as Sky Angel, which uses Internet technologies to facilitate distribution of programming to subscribers, qualifies as an MVPD for purposes of program access consumer protections. Rules referenced by Discovery demonstrate that a video programming distributor may be an MVPD even if it uses Internet transmissions for one or more links of its distribution system. For example, Interrogatory No. 11 inquires about Subpart W (including §76.1901) of the Commission’s Rules, which sets forth the following clear principles:

1. MVPDs are subject to the rules in Section W (“Each multi-channel video programming distributor shall comply with the requirements of this subpart.” 47 C.F.R. §76.1901(a)); and
2. Subpart W “shall not apply to the distribution of any content over the Internet...” 47 C.F.R. §76.1901(b).

Together, those regulations underscore two critical conclusions. First, the compliance of Sky Angel with Section W obviously is not relevant to the current matter, as (a) the scope of Subpart W is plainly not identical to the intentionally sweeping scope of the program access rules and Section 628 of the Communications Act; and (b) Sky Angel distributes content via the Internet, which expressly excludes it from application of Subpart W.

Second, a plain reading of Subpart W confirms that an MVPD, as defined by the Commission's rules, includes entities that use the Internet to transmit video programming. If not, there would have been no reason for the Commission to have expressly excluded Internet transmissions from Subpart W, as Subpart W expressly applies only to MVPDs, *see* 47 C.F.R. §76.1901(a), and still other language in Section 76.1901(b) excludes Internet access services "via cable-modem or DSL" offered by an MVPD. 47 C.F.R. §76.1901(b). If the statement that Subpart W "shall not apply to the distribution of any content over the Internet" is to have any meaning, it must be that an MVPD, which otherwise would be subject to Subpart W, is not subject to Subpart W to the extent it transmits content via the Internet. That in turn means that the FCC-defined class of MVPDs must include distributors, such as Sky Angel, that distribute programming via the Internet.

Again, however, such a legal conclusion does not require analysis of Sky Angel's conduct under Subpart W both because: (i) the issue at hand in this matter is a complaint against Discovery's illegal and anti-competitive conduct under the program access rules and Section 628 of the Communications Act, as amended, and not Subpart W; and (ii) Subpart W expressly excludes Internet transmissions.

Interrogatory No. 2: State the basis for your contention that Sky Angel offers "video programming," as defined by 47 U.S.C. §522(20).

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 2 because it requires Sky Angel to formulate a legal conclusion to develop a response. Sky Angel also objects to this Interrogatory to the extent that it calls for the production of information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other rule of privilege or confidentiality. Subject to and without waiving any of the aforementioned General Objections, *see* Reply, pp. 16-18.

Interrogatory No. 3: Describe Sky Angel's method of distributing programming to subscribers.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 3 to the extent that it seeks confidential, proprietary business information. Subject to and without waiving any of the aforementioned General Objections, *see* Complaint, pp. 1-2, 8-9 and Attachments A and B; Reply, pp. 1-2, 6-8, 9-10, 16-21, 25-28, 31-32.

Interrogatory No. 4: Describe how Sky Angel's service can be accessed by subscribers outside their homes via a high-speed Internet connection.

Response: *See* Response to Interrogatory No. 3.

Interrogatory No. 5: State whether Sky Angel has an obligation to comply with, or seek a waiver of, the Commission's rules and regulations applicable to an MVPD.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 5 because it requires Sky Angel to formulate a legal conclusion to develop a response. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Additionally, Sky Angel objects to this Interrogatory to the extent that it calls for the production of information protected from disclosure by the attorney-client

privilege, the work-product doctrine, or any other rule of privilege or confidentiality. Sky Angel also objects because this Interrogatory is vague, overly broad, and unduly burdensome.

Interrogatory No. 6: State whether Sky Angel complies with the retransmission consent requirements, as set forth in 47 U.S.C. §325(b)(1), and the Commission's implementing regulations found at 47 C.F.R. §76.64.

Response: *See* Response to Interrogatory No. 5.

Interrogatory No. 7: State whether Sky Angel complies with the reciprocal good faith bargaining requirements, as set forth in 47 U.S.C. §325(b)(3)(C), and the Commission's implementing regulations found at 47 C.F.R. §76.65.

Response: *See* Response to Interrogatory No. 5.

Interrogatory No. 8: State whether Sky Angel complies with the equal employment opportunity ("EEO") requirements, as set forth in 47 U.S.C. §554, and the Commission's implementing regulations found at 47 C.F.R. §§76.1702, 76.1802.

Response: *See* Response to Interrogatory No. 5.

Interrogatory No. 9: State whether Sky Angel complies with the closed captioning requirements, as set forth in 47 U.S.C. §613, and the Commission's implementing regulations found at 47 C.F.R. §79.1.

Response: *See* Response to Interrogatory No. 5.

Interrogatory No. 10: State whether Sky Angel complies with the navigation device requirements, as set forth in 47 U.S.C. §549, and the Commission's implementing regulations found at 47 C.F.R. §76.1200 *et seq.*

Response: *See* Response to Interrogatory No. 5.

Interrogatory No. 11: State whether Sky Angel complies with the encoding requirements found at 47 C.F.R. §76.1901 *et seq.*

Response: *See* Response to Interrogatory No. 5.

Interrogatory No. 12: State whether Sky Angel complies with the signal leakage requirements found at 47 C.F.R. §§76.605, 76.609-611, 76.1803, and 76.1804.

Response: See Response to Interrogatory No. 5.

Interrogatory No. 13: State whether Sky Angel complies with the requirements related to harmful interference found at 47 C.F.R. §76.613.

Response: See Response to Interrogatory No. 5.

Interrogatory No. 14: State whether Sky Angel complies with the requirements related to home wiring found at 47 C.F.R. §76.800 *et seq.*.

Response: See Response to Interrogatory No. 5.

Interrogatory No. 15: State whether Sky Angel complies with the requirements related to accessibility of emergency information found at 47 C.F.R. §79.2.

Response: See Response to Interrogatory No. 5.

Interrogatory No. 16: State on what basis Discovery's decision to terminate Sky Angel was improper under the Affiliation Agreement.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 16 because it requires Sky Angel to formulate a legal conclusion to develop a response. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Additionally, Sky Angel objects to this Interrogatory to the extent that it calls for the production of information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other rule of privilege or confidentiality. Subject to and without waiving any of the aforementioned General Objections, *see* Complaint, p. 7; Reply, pp. 23-32.

Interrogatory No. 17: Identify Sky Angel's competitors.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 17 to the extent that it seeks confidential, proprietary business information. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Additionally, Sky Angel objects to this Interrogatory to the extent it requires Sky Angel to provide information already known to or in the possession of Discovery or its agents. Sky Angel also objects because this Interrogatory is vague, overly broad, and unduly burdensome. Sky Angel objects to this Interrogatory to the extent that it requires Sky Angel to formulate a legal conclusion to develop a response. Subject to and without waiving any of the aforementioned General Objections, Sky Angel notes that its competitors include, but are not limited to, all national, regional and local MVPDs. In fact, Discovery's CEO, David Zaslav, recently recognized that innovative distribution platforms directly compete with cable to such an extent that they "diminish cable."³

Interrogatory No. 18: State how the loss of Discovery programming has affected or will affect Sky Angel's customer base.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 18 to the extent that it seeks confidential, proprietary business information. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Additionally, Sky Angel objects because this Interrogatory is vague, overly broad, and unduly burdensome. Sky Angel also objects to this Interrogatory to the extent that it requires Sky Angel to engage in speculation.

³ See Alex Ben Block, *Zaslav: Cablers Should Embrace New Media*, The Hollywood Reporter (May 11, 2010) (available at www.hollywoodreporter.com/hr/content_display/television/news/e3i9eebaf5d9fb67c85ff3970608d257e89) (last accessed May 19, 2010).

Interrogatory No. 19: Describe the impact that the loss of Discovery programming has had or will have on Sky Angel's customer base.

Response: *See* Response to Interrogatory No. 18.

Interrogatory No. 20: State how, if at all, Sky Angel has been or will be damaged by the loss of Discovery programming.

Response: *See* Response to Interrogatory No. 18.

Interrogatory No. 21: State the basis for Sky Angel's contention that Discovery needs "good cause" to terminate the Affiliation Agreement.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 21 because it requires Sky Angel to formulate a legal conclusion to develop a response. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Additionally, Sky Angel objects to this Interrogatory to the extent that it calls for the production of information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other rule of privilege or confidentiality. Subject to and without waiving any of the aforementioned General Objections, *see* Complaint, p. 7; Reply, pp. 23-32.

Interrogatory No. 22: State how Sky Angel competes with Discovery's programming network distribution affiliates.

Response: *See* Response to Interrogatory No. 17.

Interrogatory No. 23: State the basis for Sky Angel's contention that Discovery has committed an unfair or deceptive trade practice.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 23 because it requires Sky Angel to formulate a legal conclusion to develop a response. Additionally, Sky Angel objects to this Interrogatory to the extent that it calls for the

production of information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other rule of privilege or confidentiality. Subject to and without waiving any of the aforementioned General Objections, *see* Complaint, pp. 10-15; Reply, pp. 29-32.

Interrogatory No. 24: State the basis for Sky Angel's contention that Discovery is seeking to benefit Sky Angel's competitors.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 24 because it requires Sky Angel to formulate a legal conclusion to develop a response. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Sky Angel also objects to this Interrogatory to the extent it requires Sky Angel to provide information already known to or in the possession of Discovery or its agents. Subject to and without waiving any of the aforementioned General Objections, *see* Reply, pp. 31-32.

Interrogatory No. 25: State the basis for Sky Angel's contention that Discovery programming is "must have" programming. (Complaint at 15.)

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 25 because it requires Sky Angel to formulate a legal conclusion to develop a response. Sky Angel also objects to this Interrogatory to the extent that it seeks confidential, proprietary business information. Additionally, Sky Angel objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Sky Angel also objects to this Interrogatory to the extent it requires Sky Angel to provide information already known to or in the possession of Discovery or its agents. Subject to and without waiving any of the aforementioned General Objections, *see* Complaint, pp. 3 and 14-15; Reply, pp. 31-32.

Interrogatory No. 26: State the basis for Sky Angel's contention that Discovery permits "...other, far larger distributors to carry Discovery channels through Internet distribution..." (Complaint at 11.)

Response: Subject to and without waiving any of the aforementioned General Objections, *see* Reply, pp. 25-27; Response to Interrogatory No. 32.

Interrogatory No. 27: Identify all programming networks, including broadcast networks, satellite delivered cable programming networks, and regional sports networks, with whom Sky Angel has discussed or entered into an affiliation agreement.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 27 to the extent that it seeks confidential, proprietary business information. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Additionally, Sky Angel objects to this Interrogatory to the extent it requires Sky Angel to provide information already known to or in the possession of Discovery or its agents. Subject to and without waiving any of the aforementioned General Objections, *see* www.skyangel.com/Programming/ChannelsLineUp.

Interrogatory No. 28: Identify the networks that were carried by Sky Angel on its DBS platform and that are not distributed over its new platform.

Response: *See* Response to Interrogatory No. 27.

Interrogatory No. 29: Identify networks that Sky Angel expressed interest in carrying, but which are not provided as part of its program offerings to video customers.

Response: *See* Response to Interrogatory No. 27.

Interrogatory No. 30: Identify any network that declined to allow Sky Angel to carry the network as part of Sky Angel's service.

Response: *See* Response to Interrogatory No. 27.

Interrogatory No. 31: State whether any programming network has ever expressed concern about Sky Angel's distribution methodology.

Response: *See* Response to Interrogatory No. 27.

Interrogatory No. 32: State the basis for Sky Angel's contention that Discovery's programming networks are "...being distributed through the Internet, directly to Subscriber's computers, as part of the TV Anywhere services..." (Complaint at 5.)

Response: Subject to and without waiving any of the aforementioned General Objections, Sky Angel notes that the quoted sentence simply summarizes the conversation Mr. Collins had with representatives of Discovery. Notwithstanding the foregoing, Sky Angel notes that DISH Network's "TV Everywhere" service allows a subscriber to "watch [his/her] favorite live and recorded programs on [his/her] computer or mobile device." *See* www.dishnetwork.com/receivers/vip922/features/default.aspx (last accessed May 18, 2010).

Interrogatory No. 33: State the basis for Sky Angel's contention that, "...Sky Angel's IPTV distribution" is profitable to Discovery. (Complaint at 12.)

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 33 to the extent it requires Sky Angel to provide information already known to or in the possession of Discovery or its agents. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Subject to and without waiving any of the aforementioned General Objections, *see* Complaint, pp. 3-4, 13, 15 and Attachment B; Reply, p. 2.

Interrogatory No. 34: State the basis for Sky Angel's contention that Discovery controls "...five to ten of America's most favored programming channels..." (Complaint at 14.)

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 34 to the extent it requires Sky Angel to provide information already known to or in the possession of Discovery or its agents. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute.

Interrogatory No. 35: State the basis for Sky Angel's contention that Discovery's channels are "...necessary to the success of emerging and independent MVPDs..." (Complaint at 14.)

Response: Subject to and without waiving any of the aforementioned General Objections, *see* Complaint, pp. 3 and 14-15; Reply, pp. 4-6, 18-21 and 31-32.

Interrogatory No. 36: State why Discovery networks are "broadband programming." (Complaint at 15.)

Response: Subject to and without waiving any of the aforementioned General Objections, Sky Angel notes that the referenced sentence does not define Discovery networks as "broadband programming."

Interrogatory No. 37: State the basis for Sky Angel's contention that retaining Discovery programming network permits Sky Angel to "remain a viable competitor in the MVPD marketplace." (Complaint at 15.)

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 37 because it is not reasonably calculated to lead to facts relevant to the dispute. Sky Angel also objects to this Interrogatory to the extent that it seeks confidential, proprietary business information. Subject to and without waiving any of the aforementioned General Objections, *see* Complaint, pp. 3 and 14-15; Reply, pp. 4-6, 18-21 and 31-32.

Interrogatory No. 38: State the basis for Sky Angel's contention that Discovery intended to "hinder significantly or prevent Sky Angel from distributing programming to its subscribers in competition with affiliates of Discovery." (Complaint at 11.)

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 38 to the extent it requires Sky Angel to provide information already known to or in the possession of Discovery or its agents. Subject to and without waiving any of the aforementioned General Objections, *see* Reply, pp. 29-32.

Interrogatory No. 39: Identify every person with knowledge of facts pertaining to this proceeding.

Response: In addition to the aforementioned General Objections, Sky Angel objects to Interrogatory No. 39 because it is vague, overly broad, and unduly burdensome. Sky Angel also objects to this Interrogatory because it is not reasonably calculated to lead to facts relevant to the dispute. Additionally, Sky Angel objects to this Interrogatory to the extent it requires Sky Angel to provide information already known to or in the possession of Discovery or its agents. Sky Angel also objects because this Interrogatory is vague, overly broad, and unduly burdensome.

Interrogatory No. 40: Identify any expert witness(es) retained by Sky Angel for the purpose of providing expert testimony to the Commission related to this proceeding.

Response: None.

Interrogatory No. 41: Identify all documents provided to, reviewed by, or prepared by any expert witness(es) identified in response to Interrogatory No. 40.

Response: See Response to Interrogatory No. 40.

Respectfully submitted,

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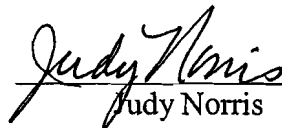
May 21, 2010

Its Attorneys

CERTIFICATE OF SERVICE

I, Judy Norris, a legal secretary in the firm of Holland & Knight LLP, hereby certify that on the 21st day of May, 2010, copies of the foregoing Responses and Objections of Sky Angel U.S., LLC to Discovery Communications, LLC's First Set of Interrogatories, were sent via email and deposited in the U.S. mail, first-class, postage prepaid, to:

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